

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Cory O. Nykoluk et al.	:	
	:	Group Art Unit: 3781
Serial Number: 10/072,042	:	
	:	Examiner: Tri M. Mai
Filed: February 5, 2002	:	
	:	
For: TOWABLE WHEELED	:	
BACKPACK	:	

**APPELLANT'S APPEAL BRIEF**

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Hon. Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

The Notice of Appeal in this Application was mailed on January 31, 2008 with a Pre-Appeal Brief Request for Review. A Notice of Panel Decision from Pre-Appeal Brief Review issued March 7, 2008 recommending that the case proceed to Board of Patent Appeals and Interferences. The present Appeal Brief is submitted in consequence thereof and is timely filed.

This brief is transmitted in triplicate and the fee required under 37 C.F.R. § 1.17(f) is submitted herewith as set forth in the accompanying transmittal letter. This brief contains the following sections under the headings and in the order set forth below.

- I. Real Party in Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims Appendix
- IX. Evidence Appendix
- X. Related Proceeding Appendix
- XI. Conclusion

Appendix A. Claims Involved in the Appeal

Appendix B: Declaration of Inventor Under 37 CFR 1.132

Pursuant to the provisions of 37 C.F.R. §41.37, Appellant submits the following brief.

I. Real Party in Interest

The real party in interest is Centric Group, LLC of St. Louis, Missouri. Centric Group LLC is the sole owner and parent entity of TRG Accessories, LLC, the assignee of record.

II. Related Appeals and Interferences

An appeal brief is being filed concurrently herewith in U.S. Application Serial No. 10/238,390 that is a continuation-in-part application of the application that is the subject of the present appeal. The appeal of Application Serial No. 10/238,390 involves at least one identical issue as the present appeal and will likely directly affect, be affected by, or have a bearing on the Board's decision in the present appeal.

It is further noted that an appeal of U.S. Application Serial No. 10/875,394 has been fully briefed and is presently pending before the Board for decision. Application Serial No. 10/875,394 is another commonly owned application with the present application but belongs to a different patent family. The appeal of Application Serial No. 10/875,394 involves a parallel issue with the present appeal and the resolution of that appeal may directly affect, be affected by, or have a bearing on the Board's decision in the present appeal.

III. Status of Claims

Claims 47-87 remain in the application. Claims 47-87 are finally rejected and are appealed.

IV. Status of Amendments

All amendments have been entered.

**V. Summary of Claimed Subject Matter**

The following summary does not limit, in any manner whatsoever, the claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal. Specifically, the present invention is defined by the following independent claims 47, 61 and 74 as set forth below in Tables 1-3, respectively, in which the claim language is correlated to exemplary portions of the specification that support the claim language and with citations to the pertinent drawings that illustrate recited features. Reference numerals corresponding to the specification are also provided. Specific citations to the specification and drawings are exemplary only and are not intended to be the sole sources of support for the invention claimed. That is, other portions of the specification and other drawings may also support the invention claimed.

Table 1

Independent Claim 47

Claim Language	Specification and Drawing Support
<p>47. A towing member configured to be joined to a piece of baggage, the towing member comprising:</p>	<p>Towing member 20 attached to a piece of baggage such as a backpack 22. <i>See</i> page 10, lines 25-29 and Figure 1. The towing member includes an arm portion configured and adapted to secure a towing handle to a piece of luggage. <i>See</i> page 7, lines 28-30.</p>
<p>a non-extendable portion configured to be joined to a piece of baggage;</p>	<p>Arm portion 24 having a tubular member 34 is fixed to the inside of the backpack 22. <i>See</i> Page 11, lines 12-15 and Figure 1.</p>
<p>an arm having a proximal end, a distal end and an axial length therebetween and defining a center axis of the arm,</p> <p>the arm operatively connected to the non-extendable portion at the proximal end,</p> <p>the arm being movable between extended and retracted positions relative to the non-extendable portion such that the distal end is a closer distance measured along the center axis of the arm to the piece of baggage when the arm is in the retracted position than when the arm is in the extended position,</p> <p>the axial length of the arm being curved outwardly away from the piece of baggage when in the extended position so that the distal end is laterally spaced a further distance measured from a center axis of the piece of baggage than the proximal end;</p>	<p>Arm portion 24 defines a center axis A-A along the length thereof. <i>See</i> page 11, lines 12-15 and Figure 1. Arm portion is attached the backpack at tubular section 34 fixed to the backpack 22 and has a free end 38 opposite the tubular section 34. Page 11, lines 22-26 and Figure 1. <i>See also</i> page 26, line 30 discussing a "distal end" of the arm portion.</p> <p>Tubular arm sections 30, 32 telescope from tubular section 34. <i>See</i> page 11, lines 12-15 and Figures 1 and 2. Extended position shown in Figure 1 and retracted position shown in Figure 2. Distal end 38 is a closer distance to the backpack in the retracted position shown in Figure 2.</p> <p>The arm portion 24 is curved and tubular sections 30, 32 telescope from the tubular section 34 along an arcuate path. <i>See</i> Figure 1, page 11, line 4 and page 11, lines 12-16. The distal end 38 is laterally spaced a distance from the backpack in the extended position as shown in Figure 1.</p>

<p>a towing handle pivotally connected to the distal end of the arm,</p> <p>the towing handle configured to pivot about the center axis at the distal end of the arm and otherwise unable to move relative to the distal end; and</p>	<p>Towing handle 200 connected to the arm portion with connector 202 having connector halves 240. <i>See</i> page 24, lines 1-4 and Figure 12.</p> <p>The towing handle, except when locked, is free to pivot about the center axis relative to the connector. <i>See</i> page 26, lines 22-24. When the handle is attached to the distal end of the arm portion, the connector halves are secured with fasteners rendering the handle otherwise unable to move. <i>See</i> page 27, lines 19-25 and Figure 12.</p>
<p>a locking mechanism located proximate the handle and the distal end of the arm,</p> <p>the locking mechanism being selectively moveable between a locked position and an unlocked position,</p> <p>wherein the locking mechanism prevents pivoting of the towing handle about the center axis when in the locked position and permits pivoting of the towing handle about the center axis when in the unlocked position.</p>	<p>Locking member 242 is engaged to connector halves 240. <i>See</i> page 25, line 30 to page 26, line 10 and Figures 12-16.</p> <p>The locking member 242 is free to translate toward and away from the handle towing handle stem 214 between locked and unlocked positions. <i>See</i> page 26, lines 17-22 and Figures 13-14.</p> <p>The locking member cooperates with channels 220 formed in a locking protrusion 218 of the handle to provide rotation. <i>See</i> page 28, lines 3-13 and Figure 12. Rotation of the handle about the center axis is prevented when the channels are engaged to the locking member. <i>See</i> page 28, lines 8-13 and Figures 13 and 16. When channels are disengaged from the locking member, the handle is freely rotatable. <i>See</i> page 28, line 27 to page 29, line 7 and Figures 14 and 15.</p>

Table 2

Independent Claim 61

Claim Language	Specification and Drawing Support
61. (previously presented) A towing member configured to be joined to a piece of baggage, the towing member comprising:	Towing member 20 attached to a piece of baggage such as a backpack 22. <i>See</i> page 10, lines 25-29 and Figure 1. The towing member includes an arm portion configured and adapted to secure a towing handle to a piece of luggage. <i>See</i> page 7, lines 28-30.
a non-extendable portion configured to be joined to a piece of baggage;	Arm portion 24 having a tubular member 34 is fixed to the inside of the backpack 22. <i>See</i> Page 11, lines 12-15 and Figure 1.
<p>an arm having a distal end and a proximal end with an axial length extending therebetween and defining a center axis of the arm,</p> <p>the arm operatively connected to the non-extendable portion at the proximal end,</p> <p>the arm being movable between extended and retracted positions such that the distal end is closer to the piece of baggage when the arm is in the retracted position than when the arm is in the extended position;</p>	<p>Arm portion 24 defines a center axis A-A along the length thereof. <i>See</i> page 11, lines 12-15 and Figure 1. Arm portion is attached the backpack at tubular section 34 fixed to the backpack 22 and has a free end 38 opposite the tubular section 34. Page 11, lines 22-26 and Figure 1. <i>See also</i> page 26, line 30 discussing a "distal end" of the arm portion.</p> <p>Tubular arm sections 30, 32 telescope from tubular section 34. <i>See</i> page 11, lines 12-15 and Figures 1 and 2. Extended position shown in Figure 1 and retracted position shown in Figure 2. Distal end 38 is a closer distance to the backpack in the retracted position shown in Figure 2.</p> <p>The arm portion 24 is curved and tubular sections 30, 32 telescope from the tubular section 34 along an arcuate path. <i>See</i> Figure 1, page 11, line 4 and page 11, lines 12-16. The distal end 38 is laterally spaced a distance from the backpack in the extended position as shown in Figure 1.</p>

<p>a towing handle pivotally connected to the distal end of the arm,</p> <p>the towing handle fixedly mounted to the distal end along an axis extending generally perpendicular to the center axis while being configured to pivot generally about the center axis at the distal end of the arm,</p> <p>the handle comprising a locking protrusion;</p>	<p>Towing handle 200 connected to the arm portion with connector 202 having connector halves 240. <i>See</i> page 24, lines 1-4 and Figure 12.</p> <p>When the handle is attached to the distal end of the arm portion, the connector halves are secured with fasteners fixing the handle in a direction perpendicular to the center axis. <i>See</i> page 27, lines 19-25 and Figure 12. The towing handle, except when locked, is free to pivot about the center axis relative to the connector. <i>See</i> page 26, lines 22-24.</p> <p>The handle includes a locking protrusion 218. <i>See</i> page 22, lines 24-29 and Figure 12.</p>
<p>a locking mechanism located proximate the handle and the distal end of the arm,</p> <p>the locking mechanism being selectively moveable between a locked position and an unlocked position,</p>	<p>The towing member includes a locking mechanism. <i>See</i> page 7, lines 25-28.</p> <p>The locking mechanism is operatively connected to the towing arm and the arm portion and is selectively movable between a locked position and an unlocked position relative to the arm portion. <i>See</i> page 8, lines 3-6.</p>
<p>wherein the locking mechanism prevents pivoting of the towing handle about the center axis when in the locked position and permits pivoting of the towing handle about the center axis when in the unlocked position,</p>	<p>The locking mechanism limits the pivoting of the towing handle when it is the locked position and does not limit pivoting of the towing handle when in the unlocked position. <i>See</i> page 8, lines 6-11.</p> <p>The towing handle can be selectively locked to the connector and the arm portion. <i>See</i> page 27, lines 26-29.</p>
<p>wherein the towing handle may be oriented in different angular orientations relative to the center axis when the locking mechanism is in the locked position,</p>	<p>The towing handle can be selectively locked in two orientations relative to the connector and the arm portion. <i>See</i> page 27, lines 26-29 and Figures 13 and 16.</p>



wherein the locking mechanism comprises a movable locking element and a connector mounted stationary to the distal end,

the locking element having a body defining a slot therethrough and the connector including a locking post extending through the slot in a direction generally perpendicular to the center axis,

the movable locking element being movable toward and away from the locking protrusion to lock and unlock the mechanism; and

Locking member 242 is engaged to connector 202 with connector halves 240. *See* page 25, line 30 to page 26, line 10 and Figures 12-16. When the handle is attached to the distal end of the arm portion, the connector halves 240 are secured with fasteners fixing the connector in a stationary manner to the distal end of the arm portion. *See* page 27, lines 19-20 and Figure 12.

The locking member 242 includes a pair of slots 264 extending therethrough. *See* page 24, lines 25-27 and Figure 12. The connector 202 includes tubular posts 250. *See* page 24, lines 6-8 and Figure 12. The posts 250 extend through the locking member slots 264. *See* page 26, lines 2-10 and Figure 12.

The locking member 242 is free to translate toward and away from the handle towing handle stem 214 and the locking protrusion 218 between locked and unlocked positions. *See* page 26, lines 17-22 and Figures 13-14.

The locking member 242 cooperates with channels 220 formed in the locking protrusion 218 of the handle to provide rotation. *See* page 28, lines 3-13 and Figure 12. Rotation of the handle about the center axis is prevented when the channels are engaged to the locking member. *See* page 28, lines 8-13 and Figures 13 and 16. When channels are disengaged from the locking member, the handle is freely rotatable. *See* page 28, line 27 to page 29, line 7 and Figures 14 and 15.

<p>a release mechanism located proximate the handle,</p> <p>the release mechanism being configured and adapted to move the locking mechanism from the locked position to the unlocked position when the release mechanism is operated by a user.</p>	<p>Unlocking/release button 210 and rod 238. <i>See</i> page 23, lines 18-32 and Figure 12.</p> <p><i>See</i> page 28, lines 2-10 and Figure 13 regarding movement of the locking member 242 to the locked position. <i>See</i> page 28, line 28 to page 29, line 8 and Figure 14 regarding movement of the locking element 242 to the unlocked position.</p>
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Table 3

Independent Claim 74

<u>Claim Language</u>	<u>Specification and Drawing Support</u>
74. (previously presented) A towing member configured to be joined to a base of a piece of baggage, the towing member comprising:	Towing member 20 attached to a piece of baggage such as a backpack 22. <i>See</i> page 10, lines 25-29 and Figure 1. The towing member includes an arm portion configured and adapted to secure a towing handle to a piece of luggage. <i>See</i> page 7, lines 28-30.
a towing handle;	Towing handle 200. <i>See</i> page 22, line 13 and Figures 12-16.
a non-extendable portion; and	Arm portion 24 having a tubular member 34 is fixed to the inside of the backpack 22. <i>See</i> Page 11, lines 12-15 and Figure 1.
a curved arm slideably received within the non-extendable portion and movable relative to the non-extendable portion along a curved telescoping path between a retracted position and an extended position,  the curved arm having a distal end with the towing handle provided thereon,  the towing handle being positioned forward of the base and not positioned over the base when the curved arm is in the extended position,  the arm having a curved portion that is retracted into the non-extendable portion when in the retracted position; and	The arm portion 24 is curved and tubular sections 30, 32 telescope from the tubular section 34 along an arcuate path. <i>See</i> Figure 1, page 11, line 4 and page 11, lines 12-16. Extended position shown in Figure 1 and retracted position shown in Figure 2.  Arm portion 24 has a free end 38 opposite the tubular section 34 that supports the towing handle. Page 11, lines 22-26 and Figure 1. <i>See also</i> page 26, line 30 discussing a "distal end" of the arm portion.
the towing handle being connected to a distal end of the curved arm and rotatable about a center axis of the arm, and  the towing handle being positionable in a first locked position when the curved arm is	Towing handle 200 connected to the arm portion. <i>See</i> page 24, lines 1-4 and Figure 12. Arm portion 24 defines a center axis A-A along the length thereof. <i>See</i> page 11, lines 12-15 and Figure 1. The towing handle, except when locked, is free to pivot about the center

<p>in the retracted position and a second locked position different from the first locked position when the curved arm is in the extended position,</p> <p>wherein the second locked position is angularly displaced from the first locked position about the center axis of the arm and wherein the handle is prevented from rotating about the center axis of the arm in each of the first and second locked positions.</p>	<p>axis relative to the connector. <i>See</i> page 26, lines 22-24.</p> <p>The towing handle can be selectively locked in two orientations relative to the connector and the arm portion. <i>See</i> page 27, lines 26-29 and Figures 13 and 16.</p> <p>The second locked position (Figure 16) is angularly displaced from the first locked position (Figure 13). The towing handle, except when locked, is free to pivot about the center axis relative to the connector. <i>See</i> page 26, lines 22-24.</p>
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#### VI. Grounds of Rejection to be Reviewed on Appeal

- A. Whether claims 47-50, 52-64, 66-76, and 78-85 are unpatentable under 35 U.S.C. 103(a) over Lu (U.S. Patent No. 6,508,344) in view of Miyoshi (U.S. Patent No. 5,908,093).
- B. Whether claims 47-50, 52-64, 66-76, and 78-85 are unpatentable under 35 U.S.C. 103(a) over Lu '344 in view of Miyoshi and either of Dean (U.S. Patent No. 3,335,075) or Murphy (U.S. Patent No. 4,368,835).
- C. Whether claims 51, 65, 77, 86, and 87 are unpatentable under 35 U.S.C. 103(a) over Lu '344 in view of Chen (U.S. Patent No. 6,591,951) or Chen (U.S. Patent No. 6,434,790).
- D. Whether claims 47-60 and 74-86 are unpatentable under 35 U.S.C. 103(a) over Chen '951 in view of Miyoshi and Dean or Lu '344.

#### VII. Argument

Appellants respectfully submit that each pending claim in the present application is patentable over the art cited by the Examiner in rejecting such claims. Accordingly, Appellants respectfully traverse the rejections of the pending claims, and requests that the Final Rejection be reversed and that the pending claims be allowed. In support of these requests, a background discussion of the cited art and a detailed discussion regarding the patentability of the claims vis-

à-vis the cited art is set forth below.

A. Background Discussion of the Cited Art

Six references are cited against the present claims. The references are briefly discussed below, and are discussed in detail hereinbelow with respect to the specific rejections wherein they have been cited.

U.S. Patent No. 6,508,344 to Lu discloses a handle structure for a towable luggage item. The handle structure is constructed to turn and adjust in direction relative to pulling bars of the luggage.

U.S. Patent No. 5,908,093 to Miyoshi discloses a bag including a fixed handle (i.e., a handle that cannot turn or otherwise be adjustable in position in relation to a supporting structure). The handle is mounted to extendable curved rods that position the handle directly over the middle of the bag between the left and right sides of the bag when the bag is an upright position and when the telescoping rods are extended.

U.S. Patent No. 3,355,075 to Dean discloses a rigid pack frame. Dean neither describes a piece of baggage nor a towing member therefor.

U.S. Patent No. 4,368,835 to Murphy discloses a back pack carrier having a frame and wheels. The frame does not include an adjustable towing handle structure.

U.S. Patent No. 6,591,951 to Chen discloses a handle grip that may be adjusted in relation to an end of a pull rod. The assignee of the present application that is the subject of this appeal owns a 50% interest in U.S. Patent No. 6,591,951.

U.S. Patent No. 6,434,790 to Chen discloses a luggage pull rod having a hand grip that "can be swiveled", but fails to describe, illustrate or explain how such "swiveling" is accomplished, and also fails to disclose any locking feature for the hand grip. The assignee of the present application that is the subject of this appeal also owns U.S. Patent No. 6,434,790.

B. Detailed Discussion of the Rejections and Arguments for Patentability

After a brief discussion of the applicable law of claim construction and the applicable law of obviousness, the issues for review will be considered in detail below in the order raised in the Final Office Action dated November 27, 2007.

1. The Applicable Law of Claim Construction

Proper construction of the claims is the starting point for examination of claims for patentability over the prior art. It is well established that in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification. In re Sneed, 218 USPQ 385 (Fed. Cir. 1983). The PTO is to apply to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification. In re Morris, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

The rejections in Final Office Action do not give certain recitations of the claims patentable weight, and appears to reflect a preference of specific structure to be recited in the claims. MPEP § 2173.02 cautions the Office that an examiner should not reject claims or insist on their own preferences if the statutory requirements are otherwise met. MPEP § 2173.05(g) also states that functional language must be evaluated and considered, just like any other limitation of the claim – for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. As such, assertions in the final rejections that the claims must be distinguished in terms of structure rather than function is not in accord with controlling law or policies of the Office for purposes of examination.

2. The Applicable Law of Obviousness

Section 103, in pertinent part, provides:

A patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. 35 U.S.C. § 103.

The United States Supreme Court, in KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1734 (2007), recently pronounced that the question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. Id. (citing Graham v. John Deere Co., 383 U.S. 1, 17-18, (1966)). See also KSR, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.”)

In KSR, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” id. at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in Graham reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” Id. The Court noted that “[t]o facilitate review, this analysis should be made explicit.” Id. at 1740-41, citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” Id.

The Federal Circuit Court of Appeals, applying KSR, recently recognized that “[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not.” Leapfrog Ent., Inc. v. Fisher-Price, Inc., 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing KSR, 127 S.Ct. 1727, 1739, 82 USPQ2d 1385, 1395 (2007)).

Further, as the Federal Circuit has explained, under Section 103 “it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” In re Wesslau, 147 USPQ 391, 393 (CCPA 1965). Also, if art “teaches away” from a claimed invention, such a teaching supports the

nonobviousness of the invention. U.S. v. Adams, 148 USPQ 479 (1966). See also, Helena Laboratories, Corp., 8 USPQ2d 1468, 1475 (Fed. Cir. 1988) ("claims, entire prior art, and prior art patents must be read as a whole"). If art 'teaches away' from a claimed invention, such a teaching supports the nonobviousness of the invention. U.S. v. Adams, 148 USPQ 479 (1966); Gillette Co. v. S.C. Johnson & Son Inc., 16 USPQ2d 1923, 1927 (Fed. Cir. 1990).

As the Federal Circuit has further explained:

The consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that [the invention] should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. See Burlington Industries v. Quigg, 822 F.2d 1581, 1583, 3 USPQ2d 1436, 1438 (Fed. Cir. 1987); In re Hedges, 783 F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1987); Orthopedic Equipment v. United States 702 F.2d 1005, 1013, 217 USPQ 193 200 (Fed. Cir. 1983); In re Rhinheart, 531 F.2d 1048, 1053-54, 189 USPQ 143, 148 (CCPA 1976). *Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure. In determining whether such a suggestion can fairly be gleaned from the prior art, the full field of the invention must be considered; for the person of ordinary skill is charged with knowledge of the entire body of technological literature, including that which might lead away from the claimed invention. Evidence that supports, rather than negates, patentability must be considered.*

In re Dow Chemical Co., (5USPQ2d 1529 at 153111532 (Fed. Cir. 1988) (emphasis added). In a similar vein, the U.S. Supreme Court in KSR also made it clear that obviousness is not proved merely by demonstrating that claimed elements were, independently, known in the prior art. In KSR, the Supreme Court cautioned that obviousness conclusions should not rely on ex post reasoning. Temptations to read the teaching of an invention into the prior art, and to view the prior art with hindsight in light of the teaching of an invention, should be resisted. That is, the teachings of a patent disclosure should not affect the hypothetical analysis of what a person of ordinary skill, without having the benefit of the patent disclosure, would have done at the time of the invention.

(3) The pending claims are patentable over the cited art.

Appellant's submit that the pending claims are patentable over the cited art on at least two grounds. First, the rejections rely upon a cited reference that is not "prior art" vis-à-vis the



present claims. Second, the teaching of the cited references does not adequately support the conclusions of obviousness expressed in the Final Office Action. Appellants will consider each of these issues in turn below.

(a.) Chen '344 is not prior art vis-à-vis the present claims.

Insofar as all of the outstanding § 103 rejections rely upon U.S. Patent No. 6,508,344 (hereinafter "the Lu '344 reference") as either a primary or secondary reference, Appellants will consider all the rejections set forth in the Final Office Action collectively for purposes of this section of the brief.

Appellants submit that Lu '344 reference is a description of the Applicants own work and is not "prior art" to the presently claimed invention. The sufficiency of the Rule 1.132 Declaration (Appendix B) attesting to the same in at least paragraph 22 thereof is therefore a central issue in the present appeal. It is not believed that the Office has followed the procedures of the MPEP or controlling law in this instance, and Appellants' request that the Board reverse the rejections that rely upon the Lu '344 reference in light of the 1.132 Declaration, the applicable provisions of the MPEP concerning the type of 1.132 Declaration at issue, and the applicable law.

Appellants submit that the 1.132 Declaration at issue is directly supported by MPEP § 715.01(c) and 716.10. Appellants point out the applicable authority requires Applicants to make a satisfactory showing that would lead to a reasonable conclusion that Applicants invented the subject matter disclosed in the Lu '344 reference. Absent some evidence to the contrary, the Office should simply accept the factual statements and supporting evidence in their entirety under Rule 1.132. Appellants submit that the proper showing has been made in the 1.132 Declaration, but the Office has refused to accept it.

The Final Office Action cites MPEP § 715.07 in support of the refusal to accept the 1.132 Declaration evidence of record. Appellants respectfully submit, however, that MPEP § 715.07 on its face applies to declarations of prior invention per 37 C.F.R. § 1.131. As such, MPEP § 715.07 has no bearing on the Declaration submitted under 37 C.F.R. § 1.132. Indeed, MPEP § 715.01(c) clearly states that the requirement of prior invention per 37 C.F.R. § 1.131 need not be met to disqualify a reference as prior art under 37 C.F.R. § 1.132.

Appellants submit that MPEP § 716.10 states that an uncontradicted, unequivocal statement that the Applicants invented the subject matter disclosed in a patent will be accepted as establishing inventorship. Appellants have certainly made such a statement and supported it with evidence. Appellants note that 1.132 submissions have been upheld by the courts having a lesser evidentiary showing than Applicants have supplied in the present case and are puzzled by the reluctance of the Office to accept the present 1.132 declaration and evidence.

MPEP § 716.10 includes a citation to In re Debaun, 214 USPQ 933 (CCPA 1982) that is believed to directly support Appellants position on this issue. As noted in In re Debaun, when faced with a 1.132 Declaration of the type at issue here, the proper subject of inquiry is what the evidence shows regarding who invented the subject matter disclosed by the reference relied upon to support the rejection. The Applicants must provide satisfactory evidence, in light of the total circumstances of the case, that the reference reflects their own work. There is no requirement that the inventors be the one to reduce the invention to practice so long as the reduction was done on their behalf. The court in In re Debaun found that an Applicant's unequivocal declaration that he conceived of anything in the reference relied upon to support the rejection that would suggest his invention claimed in his application was satisfactory evidence to remove the reference relied upon as prior art and overcome the rejection.

MPEP § 716.10, consistently with In re Debaun notes that a statement that the Applicants invented the subject matter disclosed in a patent may be insufficient when there is evidence to the contrary, but this clearly does not apply to the present prosecution. The Office has not provided, nor has it been provided with, any evidence to contradict, or even reasonably call into question, the unequivocal statement in the 1.132 Declaration that the Lu '344 reference is a description of Applicants own prior work. *See, e.g.*, paragraph 22 of the Declaration attached as Appendix B. Appellants therefore request that, pursuant to the provisions of MPEP § 716.10, that the Board reverse the refusal by the Office to accept the 1.132 declaration and reverse any rejection relying upon the Lu '344 reference.

The Final Office Action on page 5 states that the Exhibit fails to show an actual reduction to practice and fails to show aspects of the invention claimed. MPEP § 715.01(c) and 716.10, and also In re Debaun, nowhere require evidence of a reduction to practice to disqualify a reference.

as prior art under Rule 1.132. Indeed, the court in In re Debaun held that is legal error to focus on the invention being claimed by the Applicants, and also held that a reduction to practice by the inventor is not required to successfully remove a reference from the prior art under Rule 1.132.

(b.) The cited art does not render the claims obvious.

Appellants submit that the teaching of the cited references do not adequately support the conclusions of obviousness expressed in the Final Office Action.

(1). Lu '344 in view of Miyoshi

Claims 47-50, 52-64, 66-76, and 78-85 stand rejected as unpatentable under 35 U.S.C. § 103(a) over Lu (U.S. Patent No. 6,508,344) in view of U.S. Patent No. 5,908,093 to Miyoshi (hereinafter "the Miyoshi '093 reference"). The United States Supreme Court has recently held that obviousness rejections must be supported with "articulated reasoning with some rational underpinning to support the conclusion of obviousness." See KSR International Co. v. Teleflex, Inc., slip Opinion at page 14. The present rejection does not appear to meet this standard as it reflects no articulate reasoning *why* the independent or dependent claims are believed to be obvious, but rather simply rejects the claims in the form of a conclusion of obviousness. It is not believed that adequate reasons *why* the presently claimed invention is believed to be obvious have been provided on the present record. Appellants submit that the cited art conflicts with and teaches away from the subject matter presently claimed.

Appellants wish to focus on two principal points of distinction between the present claims and the cited art that are believed to be sufficient to overcome the § 103 (a) rejection of the claims over the Lu '344 reference and the Miyoshi '093 reference, although Appellants do not necessarily believe that only two distinctions exist. Specifically, Appellants wish to point out the pivoting of the handle and the curvature of the arm as claimed versus the teaching of the Lu '344 reference and the Miyoshi '093 reference.

Appellants submit that the presently claimed invention is not obvious over the Lu '344 reference in view of the Miyoshi '093 reference. The combination of the Lu '344 reference and the Miyoshi '093 reference do not teach all of the recitations of the present claims, or

alternatively teach away from certain aspects of the invention as claimed.

Independent claims 47 and 61 each recite aspects of pivotal handle movement that are neither disclosed in or reasonably suggested by the Lu '344 reference in view of the Miyoshi '093 reference. Independent claim 47 recites a towing handle pivotally connected to a distal end of an arm, the towing handle configured to pivot about the center axis at the distal end of the arm and otherwise unable to move relative to the distal end. Independent claim 61 recites the towing handle "fixedly mounted to the distal end along an axis extending generally perpendicular to the center axis while being configured to pivot generally about the center axis at the distal end of the arm." Dependent claim 85 recites that the towing handle is restrained from movement along an axis extending perpendicular to the center axis.

The Lu '344 handle, as shown in Figures 5 and 6, is pivotal about a first center axis (6) shown in Figure 5, *and* is movable about a second axis extending perpendicular to the axis (6) as shown in Figure 6 and does not meet the language of independent claim 47. The handle of the Lu '344 reference is not fixedly mounted along an axis perpendicular to the center axis of the bars (11), but rather is movable about the perpendicular axis as illustrated in Figure 6 and does not meet the language of independent claim 61. The movement shown in Figure 6 of the Lu '344 reference is expressly precluded by the language of claims 47 and 61 and renders an important feature of the Lu '344 reference inoperable. The Miyoshi '093 reference provides no disclosure or teaching to cure this deficiency, and in fact discloses a fixed handle that is not pivotal at all and therefore adds nothing to the teaching of Lu '344 with respect to this aspect of independent claims 47 and 61 and also dependent claim 85. Consequently, it is not believed that claims 47, 48, 61 and 85 are obvious over the cited art.

Independent claims 47 and 74 also recite curvature of the arms that is nowhere disclosed or reasonably suggested by the Lu '344 reference in view of the Miyoshi '093 reference. Claim 47 recites "the axial length of the arm being curved outwardly away from the piece of baggage when in the extended position so that the distal end is laterally spaced a further distance measured from a center axis of the piece of baggage than the proximal end." Independent claim 74 recites "at least one curved arm slideably received within the non-extendable portion and movable relative to the non-extendable portion along a curved telescoping path between a

retracted position and an extended position” and “the towing handle being positioned forward of the base and not positioned over the base when the curved arm is in the extended position. Dependent claims 48 and 62 also recite similar language to claim 74.

Appellants reproduce for purposes of discussion Figure 1 of the present specification that supports these recitations.

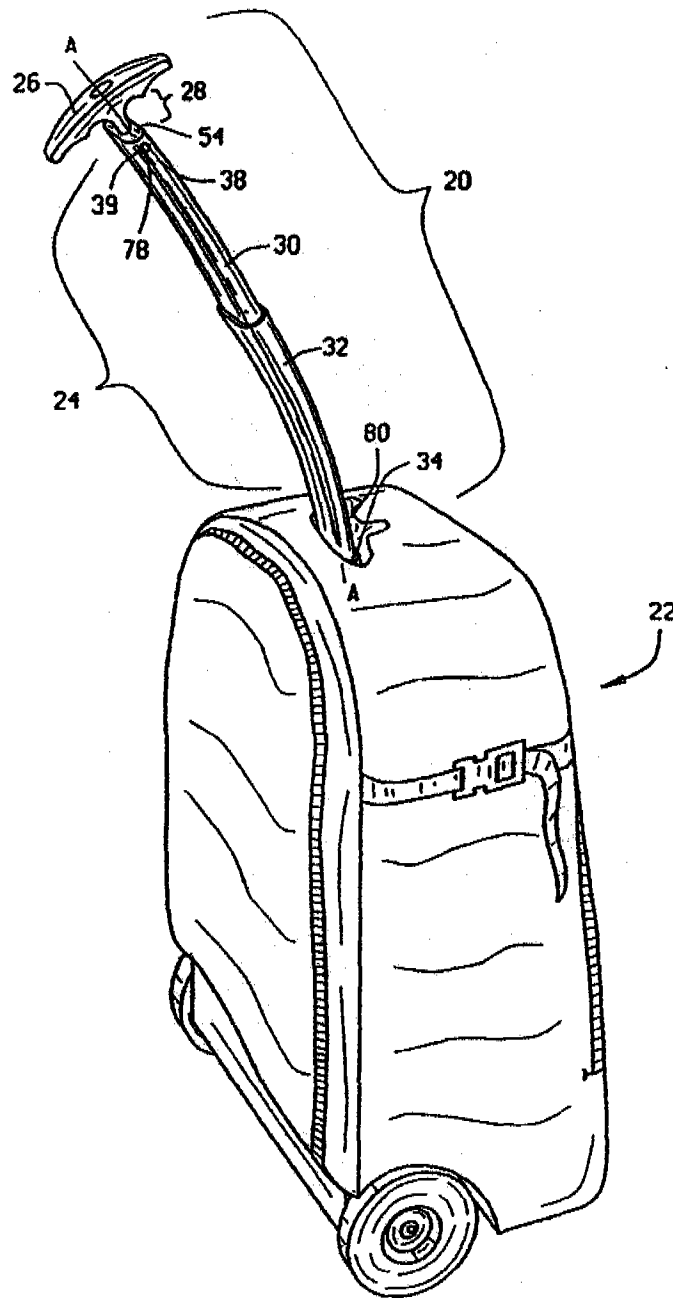
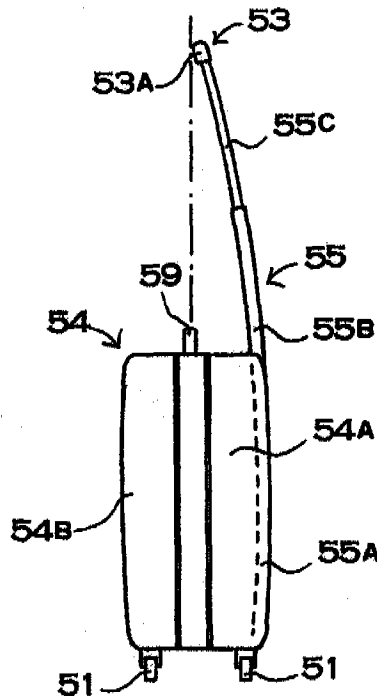


FIG. 1

Lu '344 does not disclose that the bars (11) are curved along their axial length or movable along a curved telescoping path, and Miyoshi does not cure this deficiency because it describes an incompatible construction that is believed to teach away from the recitations of claims 47, 62 and 74.

Figure 6 of the Miyoshi '093 reference is set forth below for comparison to the presently claimed subject matter. Comparing Figure 6 of the Miyoshi '093 reference to Figure 1 of the present application and the claim language at issue, the differences in curvature are believed to be evident.

**FIG. 6**



Appellants wish to point out that the United States Supreme Court has recently noted that when the prior art teaches away from combining certain elements, a combination of those elements is more likely to be nonobvious. See KSR International Co. v. Teleflex, Inc., slip Opinion at page 14. As the Federal Circuit has explained:

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.

In re Gurley, 31 USPQ2d 1130 (Fed. Cir. 1994). The reliance upon Miyoshi appears to be particularly suspect from this perspective for certain of the presently rejected claims.

For example, independent claim 47 recites that the axial length of the arm is “curved outwardly away from the piece of baggage when in the extended position so that the distal end is

laterally spaced a further distance measured from a center axis of the piece of baggage than the proximal end.” Claim 62, depending from independent claim 61, recites that the arm includes a curved portion “moving along a curved telescoping path between a retracted position and an extended position, the distal end of the arm being positioned forward of the baggage and not positioned over the baggage when the arm is in the extended position.” Independent claim 74 recites “at least one curved arm slideably received within the non-extendable portion and movable relative to the non-extendable portion along a curved telescoping path between a retracted position and an extended position” and “the towing handle being positioned forward of the base and not positioned over the base when the at least one arm is in the extended position.”

Miyoshi is cited for teaching a telescoping or extendable arm 55a, although Appellant notes that the Lu ‘344 reference already teaches extendable and retractable bars at col. 1, lines 48-50 so it is not clear at all *why* one would have consulted the Miyoshi ‘093 reference at all for teaching concerning extendable bars. Miyoshi is further cited for the proposition that it would have been obvious for one to provide curved arm portions “to enable one to tow the luggage easily.” The Miyoshi ‘093 reference, however, directly contradicts this conclusion. Specifically, the Miyoshi ‘093 reference teaches away from the presently claimed invention of at least claims 47, 62 and 74 by teaching a structure opposite to the recitations of these claims to allow the bag to be positioned more easily. That is, the distal end of the curved arms disclosed in the embodiments of Miyoshi depicted in Figures 5, 6, 9 and 10 are curved toward the center axis of the depicted bags such that a distal end of the arms is closer to the center axis of the bag when in the extended position than the proximal ends of the arms.

Moreover, Miyoshi describes a particular importance to the curvature of the extensible rods 55 shown in Figure 6, specifically that:

As shown in Figures 5 and 6, the three segment extensible rods 55 are curved so that the grip 53A when fully extended upwardly, is positioned at the middle of the bag upper face between the left and right sides of the bag body 54.

See Miyoshi col. 4, lines 53-57. Miyoshi teaches the construction of the curved arms is significant in that:

The grip can be placed at the middle between the left and right sides of the bag body. For this reason, the extensible rods of the handle are placed in a location



where they will not interfere with placement of the items in the bag interior, and the object of providing a bag which can be easily moved in any direction while lightly holding the grip is realized.

See Miyoshi col. 3, lines 20-26.

Miyoshi further disclose that:

The handle 53 is locked in the pulled-out position so that one can lean on the grip 53A while easily moving the bag supported by casters 51 by push[ing] the bag while leaning on the grip 53A, that is to say the bag can function as a walking stick.

See Miyoshi col. 5, lines 48-52.

It is therefore clear from the Miyoshi reference that the curvature of the Miyoshi handle rods was deliberately chosen and taught by Miyoshi to center the handle grip in the middle of the bag to provide a bag that can be more easily pushed in plane cabins or crowded areas while lightly holding the handle grip, as opposed to being firmly held to prevent the bag from turning, as well as to not hinder placement of items within the bag. See Miyoshi col. 2, lines 1-23 and lines 49-55. Miyoshi also notes that such pushable bags are advantageous in that no weight is transmitted to the handle in such a bag, and even a fairly heavy bag can be pushed and moved. See Miyoshi col. 2, lines 5-7.

In contrast, the handle structure of Lu '344 and as presently being claimed relate to towing handles for towable baggage that is generally designed to be pulled behind a user, rather than pushed in front a user as Miyoshi teaches. It is therefore respectfully submitted that one of ordinary skill in the art at the time that the invention was made, using common sense, would not have incorporated the curved rods of Miyoshi that are specifically designed for pushing of the bag, into a towable bag such as that of Lu '344. Looking at the Lu '344 and the Miyoshi disclosures, no apparent benefit of utilizing curved arms in the Lu '344 bag is believed to be apparent, and curving the arms in an opposite direction to that taught by Miyoshi, as the present claims require, conflicts with the actual teaching of the references and would render important features disclosed by Miyoshi inoperable for their intended purpose. It is not believed to be obvious to forsake a clear teaching of the Miyoshi reference and construct exactly what Miyoshi teaches against by reversing the curvature of the handle rods as the present claim invention requires. There is a clear, fundamental incompatibility between the teaching of the Miyoshi

reference and the present claims that weighs against any conclusion of obviousness. The Miyoshi disclosure clearly would have placed one of ordinary skill in the art, following its teachings, on a divergent path from the present claims. Appellants therefore submit that claims 47, 48, 62 and 74 are not obvious over the cited art.

Dependent claims not specifically discussed above, namely claims 49-50, 52-60, 63-64, 66-73, and 78-84 add further definition and clarity to their respective base claims, and are likewise not believed to be obvious over the cited art when considered in combination with their base claims.

Appellants accordingly request that the rejection of claims 47-50, 52-64, 66-76 and 78-85 be reversed.

B. Lu '344 in view of Miyoshi and Dean or  
Murphy.

Claims 47-50, 52-64, 66-76, and 78-85 stand rejected as unpatentable under 35 U.S.C. § 103(a) over Lu '344 in view of Miyoshi and either of Dean (U.S. Patent No. 3,335,075) or Murphy (U.S. Patent No. 4,368,835).

Appellants incorporate the discussion of the Lu' 344 reference and the Miyoshi '093 reference with respect to claims 47, 48, 61, 62, 74 and 85. Dean and/or Murphy fail to cure the deficiencies of Lu '344 and Miyoshi with respect to at least these claims. In fact, neither Dean nor Murphy disclose a handle movable in any way relative to a distal end of an arm, and consequently neither Dean nor Murphy fairly supplement the teaching of Lu '344 with respect to the pivoting handle structures now being claimed. Accordingly, the cited art is not believed to render the instant claims obvious regarding the pivoting movement and prevention thereof as presently claimed.

Dean is cited for disclosing curved bars. The citation of Murphy is unexplained in the Final Office Action, but presumably Murphy is also cited for disclosing a curved frame 12. The Final Office Action states that it would have been obvious to provide curved arms to "enable one to support the handle on the back when wearing." This conclusion, however, is believed to reflect an obviousness analysis performed in hindsight.

Neither Dean or Murphy describe telescoping members at all, and the back pack frames of Dean and Murphy are not believed to be suggestive of telescoping members of a handle structure. The curvature of backpack frame elements is not believed to implicate a curvature of a towing member, nor do the references fairly suggest that it would be desirable to "support the handle on the back" as the Office Action states. It seems entirely plausible that the telescoping pulling bars 11 disclosed by Lu, which are nowhere described as being curved along their lengths, could be used with a curved frame element as taught by either Dean or Murphy, without the handle ever being supported on the wearer's back. Alternatively stated, the curved frame elements of Dean and/or Murphy may obviate any need to curve the telescoping elements of a handle as long as the handle was spaced from the frame elements such that it does not contact the wearer's back. As such, it is not clear that even if one were to have combined aspects of the Dean and Murphy frames with the Lu '344 handle that the presently claimed invention would have resulted. The Lu '344 handle could be used with the Dean and Murphy frames without modifying it at all.

The citation of Dean and Murphy for the curvature of the frame elements is also in direct conflict with the disclosure of Miyoshi that teaches an opposite curvature of the telescoping portions. The Miyoshi '093 reference and the Dean and Murphy references are fundamentally incompatible regarding the curvature of such elements.

Appellants submit that a *prima facie* case of obviousness has not been established by the cited art and requests that the rejection of claims 47-50, 52-64, 66-76, and 78-85 as obvious over Lu '344 in view of Miyoshi and either of Dean or Murphy be reversed.

C. Lu '344 in view of Chen '951 or Chen '790

Whether claims 51, 65, 77, 86, and 87 stand rejected under 35 U.S.C. § 103(a) over Lu '344 in view of Chen (U.S. Patent No.6,591,951) or Chen (U.S. Patent No.6,434,790).

Appellants note that claims 51, 65, 77, 86, and 87 are all dependent claims, and their respective base claims are submitted to be patentable for the reasons explained above. Chen '790 and Chen '951 are cited in the Office Action for their teaching a single pole constructions, but notably fail to teach other aspects of the present claims.

For example, Chen '790 states that hand grip may be swiveled, but fails to describe, illustrate or explain how that might be accomplished, and also fails to disclose any locking feature that would cure the deficiencies of Lu with respect to claims 47, 61, and 74 discussed above.

Chen '951 describes a locking handle construction that is believed to conflict with the handle construction of the Lu '344 reference.

None of Chen '790, Chen '951 or Lu '344 disclose the curvature of the arms recited in claims 47, 62 and 64. It is therefore submitted that these claims are patentable over Lu '344 in view of Chen '951 or Chen '790, and when the recitations of claims 51, 65, 77, 86, and 87 are considered in combination with the recitations of their base claims, claims 51, 65, 77, 86, and 87 are likewise submitted to be patentable.

Appellants request that the § 103(a) rejection of claims 51, 65, 77, 86, and 87 be reversed.

D. Chen '951 in view of Miyoshi and Dean or Lu '344.

Claims 47-60 and 74-86 stand rejected as unpatentable under 35 U.S.C. § 103(a) over Chen '951 in view of Miyoshi and Dean or Lu '344.

Neither Chen '951 nor Miyoshi '093 disclose backpacks at all, so the logical connection between the back pack frame of Dean to the disclosures of Chen '951 or Miyoshi '093 is not apparent. Appellants again submit that conclusion of obviousness reflects an impermissible hindsight analysis of the prior art. The proffered motivation set forth in the final rejection to combine a curved arm to Chen '951 is to enable one to support the handle on the back when wearing, but neither Chen '951 or Miyoshi '093 are suggestive of the backpack frame of Dean, or vice versa.

The Miyoshi '903 reference teaches away from the recitations of independent claims 47 and 74 with respect to the curvature of the arms recited in at least independent claims 47 and 74, and it is therefore submitted that a *prima facie* case of obviousness has not been established.

The disclosures of the Miyoshi '093 reference and the disclosure of Dean are likewise

submitted to be incompatible with respect to the curvature of the poles such that a *prima facie* case of obviousness does not exist due to inconsistent and conflicting disclosures of the references regarding a direction of curvature toward or away from a center of the bag.

Also, for similar reasons to those noted above, it is questionable whether combining aspects of Chen '951 and Dean or Lu '344 would have resulted in the invention being claimed, namely that the straight pole of Chen '951 could be used with curved frame elements as taught by Dean or Murphy without the telescoping pole of Chen ever contacting the back of a wearer.

Appellants accordingly request that the § 103(a) rejection of claims 47-60 and 74-86 be reversed.

E. Comments in response to assertions made in the  
final rejection.

The Final Office Action asserts that Appellants have attached the references individually, whereas the rejections are based on combinations of references. In reply, Appellants respectfully submit that the Office has mischaracterized Appellants position. The prior art must be evaluated as a whole for what it suggests to persons in the art, and Appellants have merely pointed out differences among the references that indicate that the art as a whole is not suggestive of the invention presently being claimed.

Appellants have pointed out numerous examples of the cited art disclosing different structures producing different functions and results than the presently claimed invention, each of which points away from any conclusion of obviousness in a considered analysis. Appellants have pointed out examples of the failure of the cited art to teach all the recitations claimed, and also examples of teaching in the references that support patentability of the claims. Rather than being misleading as the Final Office Action suggests, consideration of such evidence is a required part of the obviousness analysis. The U.S. Supreme Court in KSR was careful to note this as an important part of the obviousness analysis, and also carefully cautioned against hindsight reasoning in the analysis. It appears that the Office is selectively culling elements from prior art references and using them, with hindsight, to reconstruct the invention now being claimed.

### **VIII. Claims Appendix**

An appendix containing the rejected claims is attached as Appendix A.

### **IX. Evidence Appendix**

The declaration submitted under Rule 1.132 referred to above is attached as Appendix B.

### **X. Related Proceeding Appendix**


While related proceedings have been identified above in Part II, as of the date of submission of this brief no decision has been rendered in any of the related proceedings. Therefore, there is no corresponding appendix including such decisions.

### **XI. Conclusion**

For the foregoing reasons, reversal of the Final Rejection of the claims is respectfully requested.

The fee set forth in 37 C.F.R. § 41.20 was previously paid.

Respectfully submitted,

  
Bruce T. Atkins, Registration No. 43,476  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070

## APPENDIX A

### Claims Involved in the Appeal

1-46 (cancelled)

47. (previously presented) A towing member configured to be joined to a piece of baggage, the towing member comprising:

a non-extendable portion configured to be joined to a piece of baggage;

an arm having a proximal end, a distal end and an axial length therebetween and defining a center axis of the arm, the arm operatively connected to the non-extendable portion at the proximal end, the arm being movable between extended and retracted positions relative to the non-extendable portion such that the distal end is a closer distance measured along the center axis of the arm to the piece of baggage when the arm is in the retracted position than when the arm is in the extended position, the axial length of the arm being curved outwardly away from the piece of baggage when in the extended position so that the distal end is laterally spaced a further distance measured from a center axis of the piece of baggage than the proximal end;

a towing handle pivotally connected to the distal end of the arm, the towing handle configured to pivot about the center axis at the distal end of the arm and otherwise unable to move relative to the distal end; and

a locking mechanism located proximate the handle and the distal end of the arm, the locking mechanism being selectively moveable between a locked position and an unlocked position, wherein the locking mechanism prevents pivoting of the towing handle about the center axis when in the locked position and permits pivoting of the towing handle about the center axis when in the unlocked position.

48. (previously presented) The towing member of claim 47, wherein the arm is received within the non-extendable portion when in the retracted position, the arm moving along a curved telescoping path between the retracted position and the extended position, the distal end of the arm being positioned forward of the baggage and not positioned over the baggage when the arm is in the extended position.

49. (previously presented) The towing member of claim 47, wherein the arm includes first and second curved portions, the first curved portion sliding into, and out of, the second curved portion along a curved telescoping path when the arm is moved between the extended and retracted positions.

50. (previously presented) The towing member of claim 47, wherein the arm includes first and second curved portions that both slide into, and out of, the non-extendable portion along a curved telescoping path when the arm is moved between the extended and retracted positions.

51. (previously presented) The towing member of claim 47, wherein the arm comprises a single-pole telescoping member extending and retracting along the curved telescoping path between extended and retracted positions.

52. (previously presented) The towing member of claim 47, wherein the non-extendable portion is configured to be located inside of a piece of luggage.

53. (previously presented) The towing member of claim 47, wherein the non-extendable portion is configured to be located inside of a backpack.

54. (previously presented) The towing member of claim 47, further comprising a release mechanism located proximate the towing handle and connected to the locking mechanism, the release mechanism being manually operated by a user to unlock the locking mechanism.

55. (previously presented) The towing member of claim 47, wherein the towing handle has a hand grip portion containing a release button facing upward from the towing handle.

56. (previously presented) The towing member of claim 47, wherein the arm has one of an elliptical, tubular and oval cross-section.

57. (previously presented) The towing member of claim 47, wherein the towing handle is T-shaped and has a stem portion extending from a cross-bar, the locking mechanism being joined to the stem portion.

58. (previously presented) The towing member of claim 47, wherein the locking mechanism includes locking protrusions that form a channel there between and a locking member that is releasably fit within the channel to prevent and permit pivotal motion between the arm and the towing handle.



59. (previously presented) The towing member of claim 47, wherein the arm is uniformly curved along a complete length thereof from the proximal end to the distal end.

60. (previously presented) The towing member of claim 47, further comprising a base and at least one wheel coupled to the bottom portion.

61. (previously presented) A towing member configured to be joined to a piece of baggage, the towing member comprising:

a non-extendable portion configured to be joined to a piece of baggage;

an arm having a distal end and a proximal end with an axial length extending therebetween and defining a center axis of the arm, the arm operatively connected to the non-extendable portion at the proximal end, the arm being movable between extended and retracted positions such that the distal end is closer to the piece of baggage when the arm is in the retracted position than when the arm is in the extended position;

a towing handle pivotally connected to the distal end of the arm, the towing handle fixedly mounted to the distal end along an axis extending generally perpendicular to the center axis while being configured to pivot generally about the center axis at the distal end of the arm, the handle comprising a locking protrusion;

a locking mechanism located proximate the handle and the distal end of the arm, the locking mechanism being selectively moveable between a locked position and an unlocked position,

wherein the locking mechanism prevents pivoting of the towing handle about the center axis when in the locked position and permits pivoting of the towing handle about the center axis when in the unlocked position,

wherein the towing handle may be oriented in different angular orientations relative to the center axis when the locking mechanism is in the locked position,

wherein the locking mechanism comprises a movable locking element and a connector mounted stationary to the distal end, the locking element having a body defining a slot therethrough and the connector including a locking post extending through the slot in a direction generally perpendicular to the center axis, the movable locking element being movable toward

and away from the locking protrusion to lock and unlock the mechanism; and

a release mechanism located proximate the handle, the release mechanism being configured and adapted to move the locking mechanism from the locked position to the unlocked position when the release mechanism is operated by a user.

62. (previously presented) The towing member of claim 61, wherein the arm includes a curved portion that is received within the non-extendable portion when in the retracted position, the curved portion moving along a curved telescoping path between a retracted position and an extended position, the distal end of the arm being positioned forward of the baggage and not positioned over the baggage when the arm is in the extended position.

63. (previously presented) The towing member of claim 61, wherein the arm includes first and second curved portions, the first curved portion sliding into, and out of, the second curved portion along a curved telescoping path when the arm is moved between the extended and retracted positions.

64. (previously presented) The towing member of claim 61, wherein the arm includes first and second curved portions that both slide into, and out of, the non-extendable portion along a curved telescoping path when the arm is moved between the extended and retracted positions.

65. (previously presented) The towing member of claim 61, wherein the arm comprises a single-pole telescoping member extending and retracting along the curved telescoping path between extended and retracted positions.

66. (previously presented) The towing member of claim 61, wherein the non-extendable portion is configured to be located inside of a piece of luggage.

67. (previously presented) The towing member of claim 61, wherein the non-extendable portion is configured to be located inside of a backpack.

68. (previously presented) The towing member of claim 61, wherein the towing handle has a hand grip portion and the release mechanism includes a release button provided on the hand grip facing upward from the towing handle.

69. (previously presented) The towing member of claim 61, wherein the arm has one of an elliptical, tubular and oval cross-section.

70. (previously presented) The towing member of claim 61, wherein the towing handle is T-shaped and has a stem portion extending from a cross-bar, the locking mechanism being joined to the stem portion.

71. (previously presented) The towing member of claim 61, wherein the locking protrusion defines intersecting channels and the locking member is releasably fit within the channels to lockably retain the towing handle in different towing positions pivoted about the center axis.

72. (previously presented) The towing member of claim 61, wherein the arm is uniformly curved along a complete length thereof from the proximal end to the distal end.

73. (currently amended) The towing member of claim 61, further comprising a rigid base and at least one wheel coupled to the base.

74. (previously presented) A towing member configured to be joined to a base of a piece of baggage, the towing member comprising:

a towing handle;

a non-extendable portion; and

a curved arm slideably received within the non-extendable portion and movable relative to the non-extendable portion along a curved telescoping path between a retracted position and an extended position, the curved arm having a distal end with the towing handle provided thereon, the towing handle being positioned forward of the base and not positioned over the base when the curved arm is in the extended position, the arm having a curved portion that is retracted into the non-extendable portion when in the retracted position; and

the towing handle being connected to a distal end of the curved arm and rotatable about a center axis of the arm, and the towing handle being positionable in a first locked position when the curved arm is in the retracted position and a second locked position different from the first locked position when the curved arm is in the extended position, wherein the second locked position is angularly displaced from the first locked position about the center axis of the arm and wherein the handle is prevented from rotating about the center axis of the arm in each of the first and second locked positions.

75. (previously presented) The towing member of claim 74, wherein the arm includes first and second curved portions, the first curved portion sliding into, and out of, the second curved portion along a curved telescoping path when the arm is moved between the extended and retracted positions.

76. (previously presented) The towing member of claim 74, wherein the arm includes first and second curved portions that both slide into, and out of, the non-extendable portion along a curved telescoping path when the arm is moved between the extended and retracted positions.

77. (currently amended) The towing member of claim 74, wherein the ~~at least one~~ arm comprises a single-pole telescoping member extending and retracting along the curved telescoping path between extended and retracted positions.

78. (previously presented) The towing member of claim 74, wherein the non-extendable portion is configured to be located inside of a piece of luggage.

79. (previously presented) The towing member of claim 74, wherein the non-extendable portion is configured to be located inside of a backpack.

80. (previously presented) The towing member of claim 74, wherein the towing handle comprises a handle grip and the towing member further comprising a locking member located proximate the distal end of the arm, the locking-member comprising opposing parallel surfaces and being selectively moveable between a locked position located at a first distance from the distal end and an unlocked position located at a second distance from the distal end, wherein the locking member obstructs pivoting of the towing handle relative to the distal end of the arm when in the locked position and permits pivoting of the towing handle relative to the distal end of the arm when in the unlocked position.

81. (previously presented) The towing member of claim 74, wherein the arm has one of an elliptical, tubular and oval cross-section.

82. (previously presented) The towing member of claim 74, wherein the towing handle is T-shaped and has a stem portion extending from a cross-bar, the locking mechanism being joined to the stem portion.

83. (previously presented) The towing member of claim 74, wherein the arm is

uniformly curved along a complete length thereof from the proximal end to the distal end.

84. (previously presented) The towing member of claim 74, wherein the towing handle is pivotal for 360 degrees of rotation about and relative to the distal end of the arm when unlocked.

85. (previously presented) The towing member of claim 74, wherein the towing handle is restrained from movement along an axis extending perpendicular to the center axis.

86. (previously presented) The towing member of claim 47, wherein the arm portion comprises a single pole telescoping member.

87. (previously presented) The towing member of claim 61 wherein the arm portion comprises a single pole telescoping member.

**APPENDIX B**

**Declaration of Inventor Under 37 CFR. § 1.132**

Attorney Docket No.: (10759-0159)

Serial No.: 10/072,042

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Cory O. Nykoluk :  
: Art Unit: 3727  
Serial No.: 10/072,042 :  
: Examiner: Tri M. Mai  
Filed: February 5, 2002 :  
:  
For: PIVOTAL HANDLE FOR :  
TOWABLE BAGGAGE :

## DECLARATION UNDER 37 CFR 1.132

Mail Stop: AF  
P.O. Box 1450  
Commissioner for Patents  
Alexandria, VA 22313-1450

I, Todd Siwak, declare and state as follows:

1. I have reviewed and understand the specification and drawings of U.S. Application 10/072,042 (hereafter "Subject Application").
2. I have reviewed and understand the claims of the Subject Application (hereafter "Claimed Invention").
3. I was a founding partner/owner of TRG Accessories L.L.C. (hereafter "TRG") since TRG's inception prior to 2001, and am currently a senior manager within TRG.
4. I have reviewed and understand the subject matter described in U.S. Patent 6,508,344 to Lien Ching Lu, titled "Handle Structure for Turning and Adjusting Direction" issuing January 21, 2003 from application serial number 10/028,679 filed on December 28, 2001 (hereafter "Lu Patent").
5. I have reviewed and understand the subject matter described in U.S. Patent 6,530,459 to Lien Ching Lu, titled "Handle Structure for Adjusting Direction" issuing March 11, 2003 from application serial number 10/028,674 filed on December 28, 2001 (hereafter "Lu '459 Patent") (hereafter the Lu '344 Patent and the Lu '459 Patent shall collectively be referred to as the "Lu Patents").

Attorney Docket No.: (10759-0159)

Serial No.: 10/072,042

6. On information and belief, the named inventors of the Subject Application conceived of and reduced to practice the Claimed Invention of the Subject Application before December 28, 2001, the filing date of both Lu Patents.

### FACTS AND DOCUMENTARY EVIDENCE

7. Factual evidence proving the conclusions made in this Declaration can be found hereafter and in the attached documents (Appendices A-C).
8. At least as early as the middle of 2001, I became involved in a project at TRG to develop a new pivotal handle assembly (hereafter "TKO Handle System") for a towable piece of baggage.
9. My responsibilities at TRG, at least as early as the middle of 2001, included assisting the inventors of the Subject Application and TRG to identify a low-cost manufacturer for the TKO Handle System.
10. The named inventors on the Subject Application explained their concept(s) for the TKO Handle System to me at least as early as the middle of 2001.
11. The TKO Handle System explained to me, at least as early as the middle of 2001, by the inventors of the Subject Application embodied the Claimed Invention of the Subject Application.
12. Appendix A attached hereto includes a series of sketches, prepared on or about June 8, 2001, that illustrate the concepts for the TKO Handle Assembly and the Claimed Invention that were explained to me by the inventors of the Subject Application.
13. The sketches at appendix A illustrate, among other features, a baggage portion, an arm portion and a towing handle rotatably connected to the arm portion, a pivoting mechanism pivotally connecting the towing handle to the distal end of the arm such that the towing handle pivots generally about relative to the distal end of the arm, a locking mechanism being selectively moveable between a locked position and an unlocked position, wherein the locking mechanism prevents pivoting of the handle relative to the distal end of the arm when in the locked position and permits pivoting of the towing handle relative to the distal end of the arm when in the unlocked position.



Attorney Docket No.: (10759-0159)

Serial No.: 10/072,042

14. Appendix B attached hereto include a computer generated design drawing, prepared on or about August 9, 2001, that illustrate the concepts for the TKO Handle System and the Claimed Invention that were explained to me by the inventors of the Subject Application.
15. Appendix C attached hereto includes screen shots of a directory of files saved on a CD on or about October 17, 2001 including JPEG images constituting photographs taken on or about October 17, 2001 of a completed, operational prototype of the TKO Handle System that embodied the towing handle, arm, pivotal mechanism locking and mechanism of the Claimed Invention of the Subject Application, and was intended for use on a baggage portion.
16. On information and belief, prior to December of 2001, TRG contacted Lien Ching Lu in connection with determining whether Mr. Lu's company, Ting Cheng Co., Ltd. (hereafter "TC") would be a satisfactory manufacturer of the TKO Handle System.
17. On information and belief, TRG explained the TKO Handle System and Claimed Invention to Mr. Lu and other individuals at TC in order for TC to provide a proposal to manufacture the TKO Handle System.
18. On December 28, 2001, unknown to TRG, TC filed U.S. patent application 10/028,679 and U.S. patent application 10/028,674 (now the Lu Patents).
19. On February 5, 2002, TRG filed the Subject Application.
20. To the extent that the Lu '344 Patent includes subject matter describing the Claimed Invention of the Subject Application, Lien Ching Lu, the individual named as the inventor on the Lu '344 Patent, did not invent, and did not provide any inventive contribution to, such subject matter.
21. To the extent that the Lu '344 Patent includes subject matter describing the Claimed Invention of the Subject Application, Lien Ching Lu derived and copied such subject matter from the named inventors of the Subject Application.
22. To the extent that the Lu '344 Patent includes subject matter describing the Claimed Invention of the Subject Application, the Lu '344 Patent does not constitute prior art against the Claimed Invention, because the Lu '344 Patent describes the work of the inventors of the Subject Application, not the work of another person.

Attorney Docket No.: (10759-0159)

Serial No.: 10/072,042

DECLARATION

As the person signing below:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application and any patent issued thereon.

SIGNATURE

SOLE INVENTOR

Full Name: Todd Siwak

Signature: 

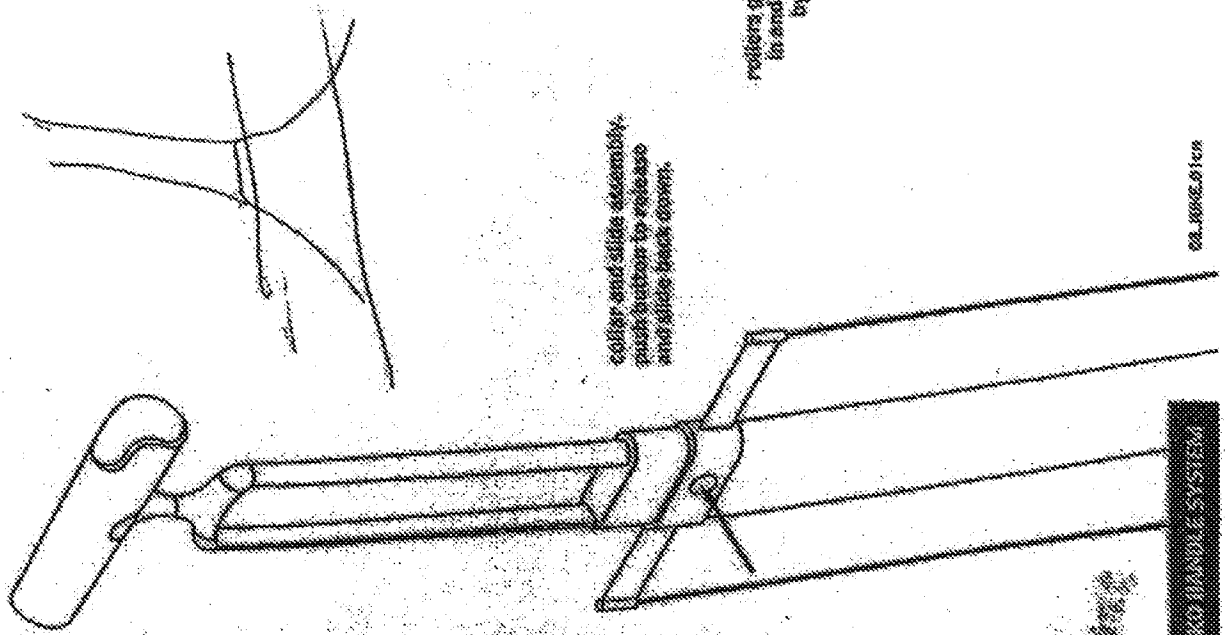
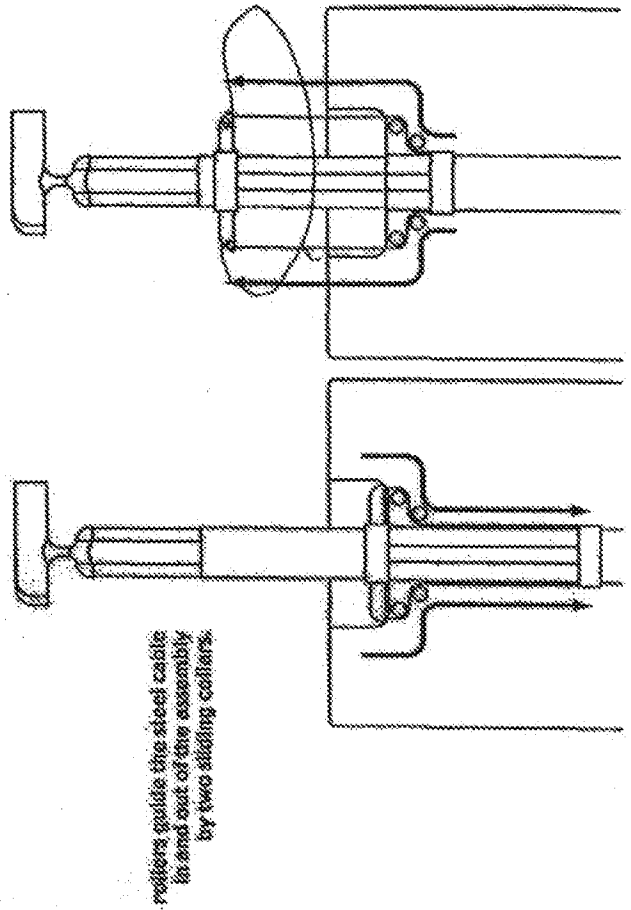
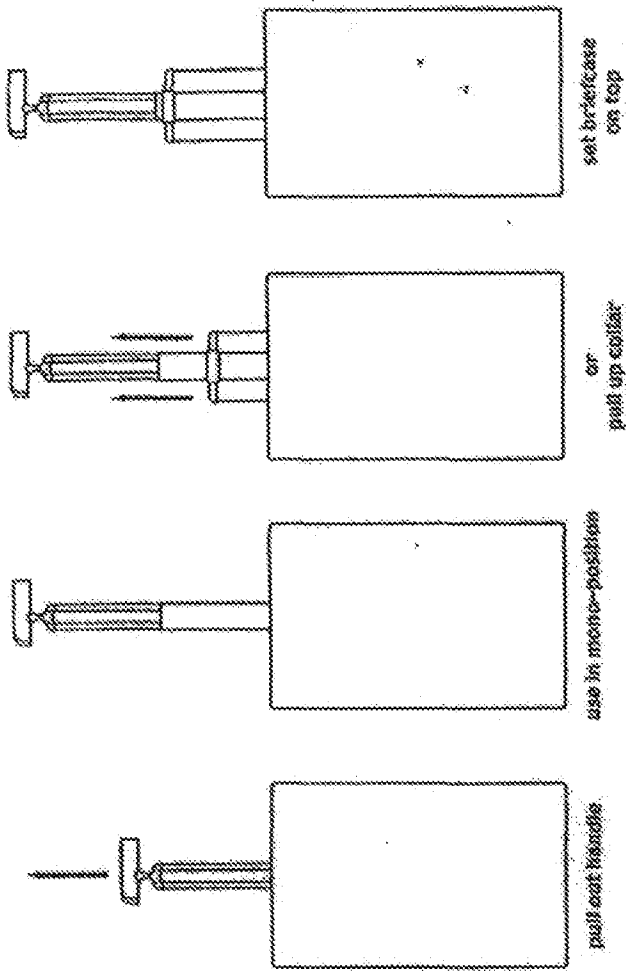
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Residence: \* 3 DROMAIA ROAD ST. LOUIS MO 63124

Citizenship: US

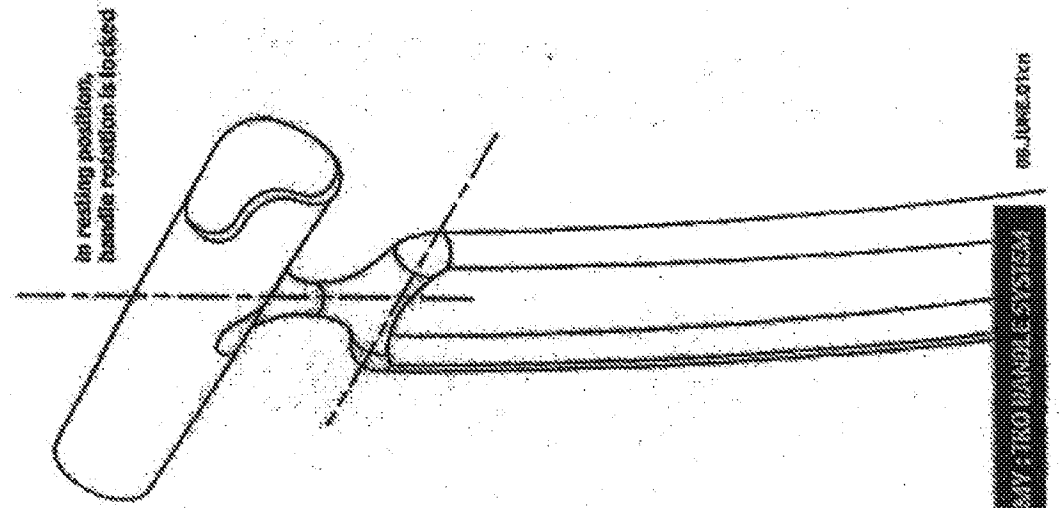
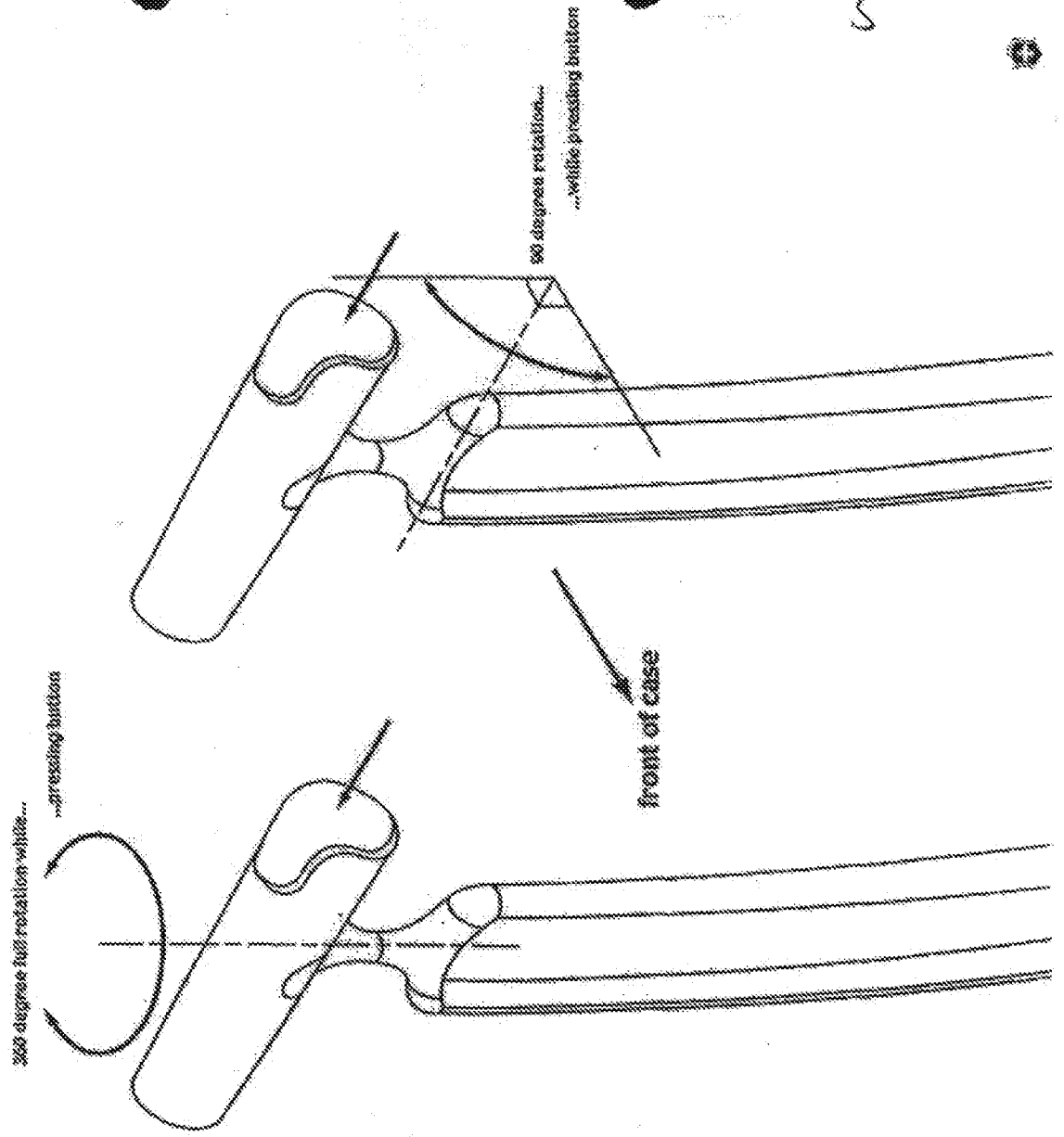
Post Office Address: \_\_\_\_\_

The following are attached and made a part hereof:Attachment A: June 8, 2001 sketches of TKO Handle System.Attachment B: August 9, 2001 computer generated image of TKO Handle System.Attachment C: October 17, 2001 photographs of prototype for TKO Handle System.



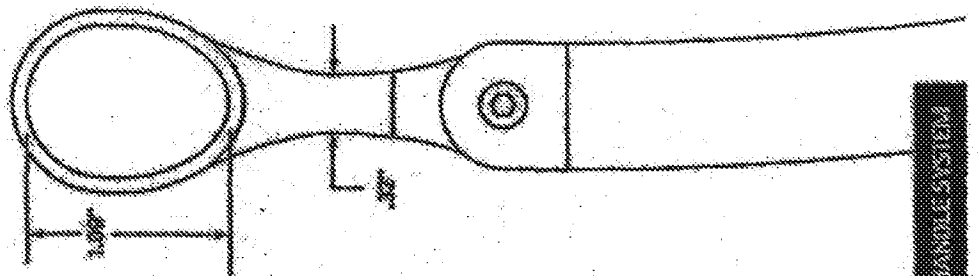
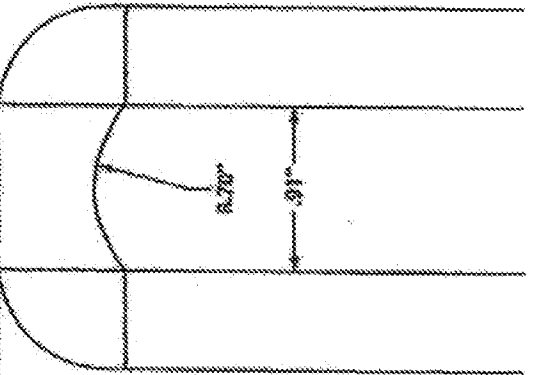
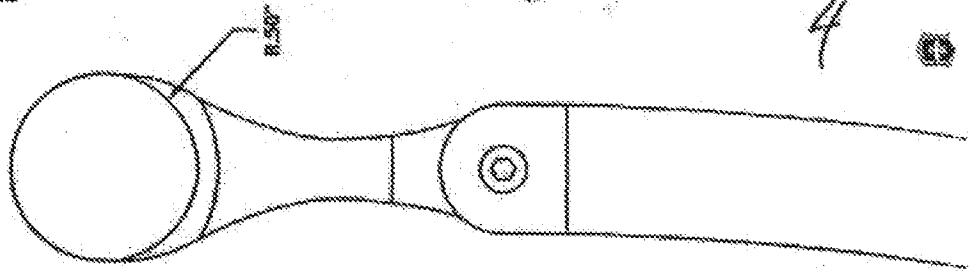
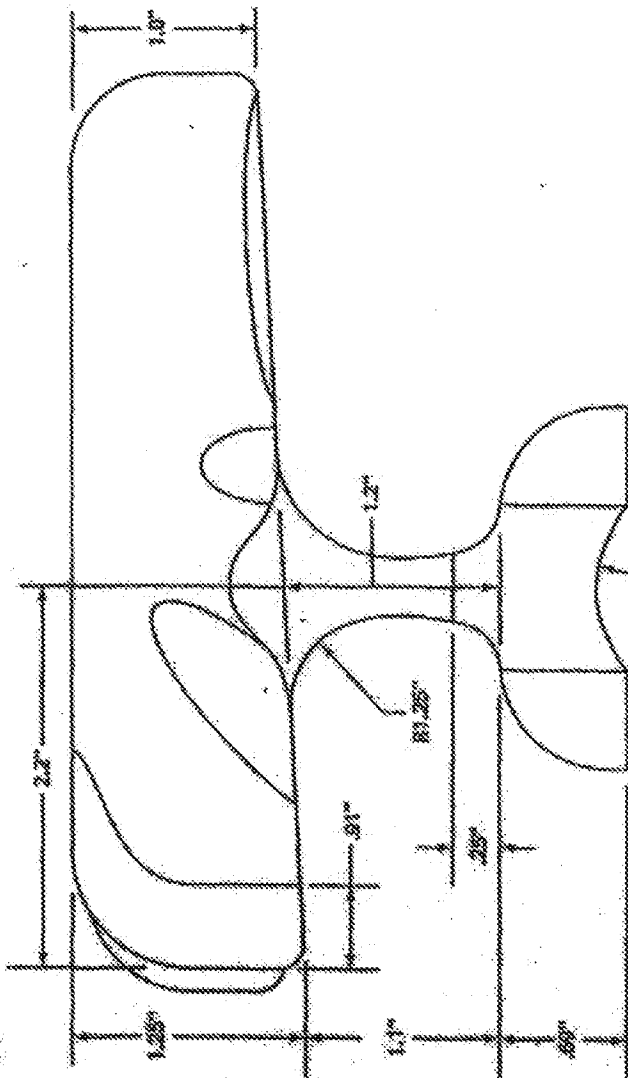
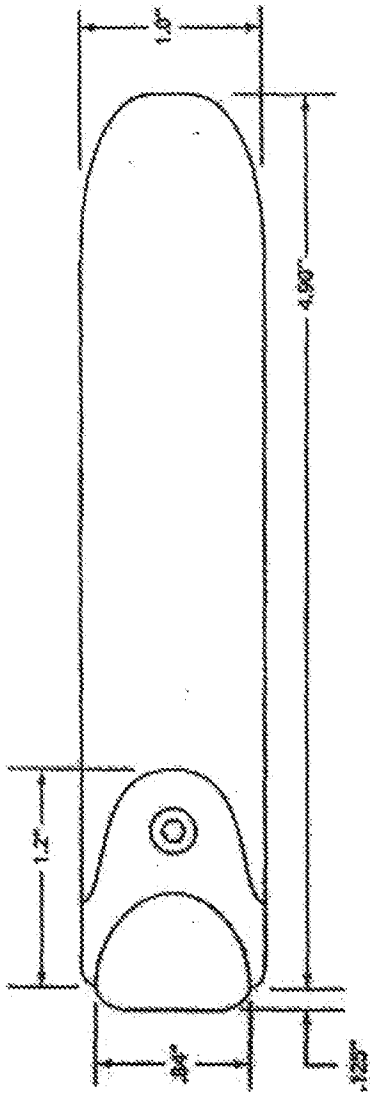
08.0002.010

SWISS ARMY TWO HANDLE SYSTEM



08 JUN 2010

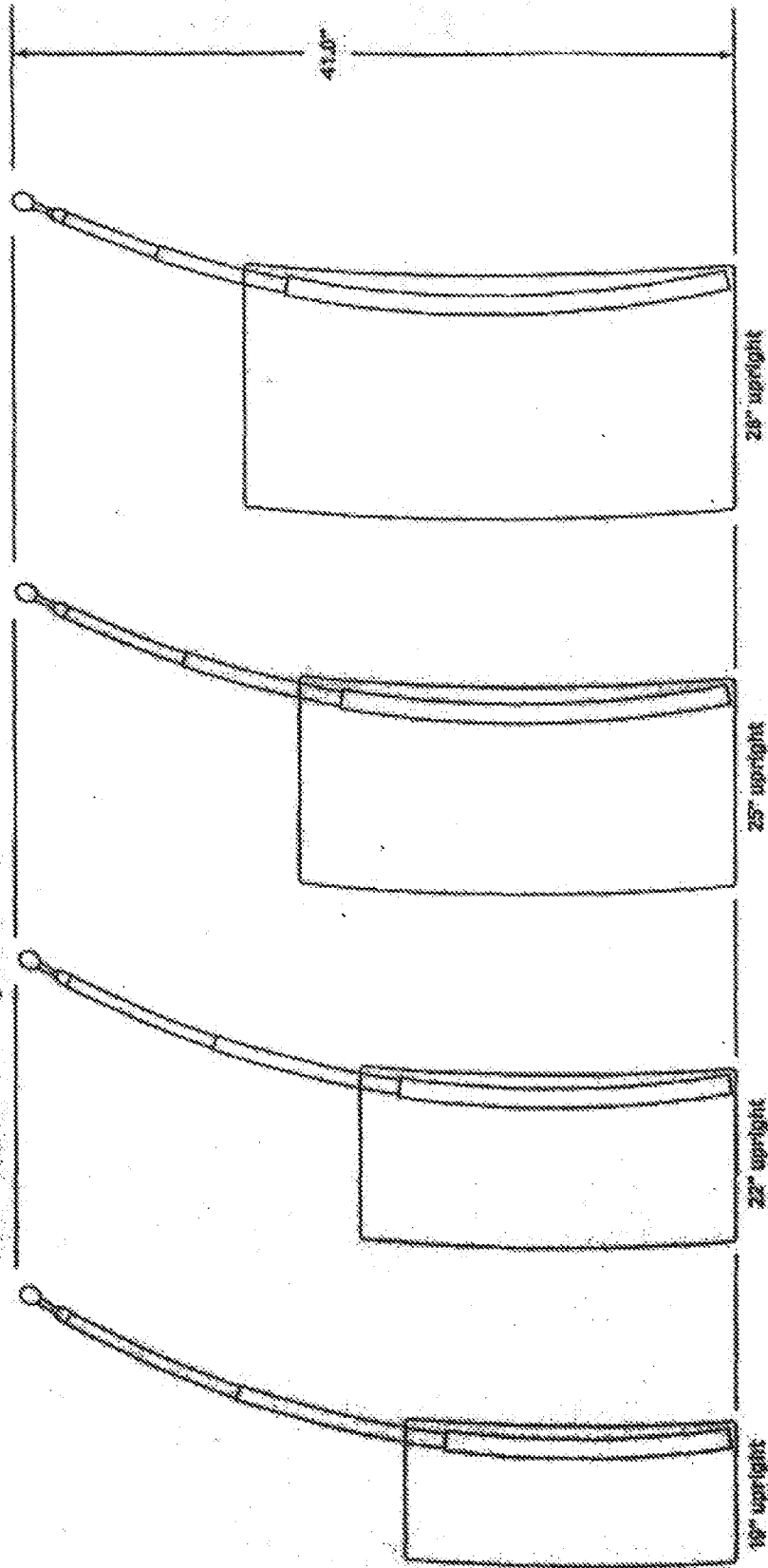
4



20. 0000.01 cm

MECHANICAL DESIGN - JAMES S. JAMES

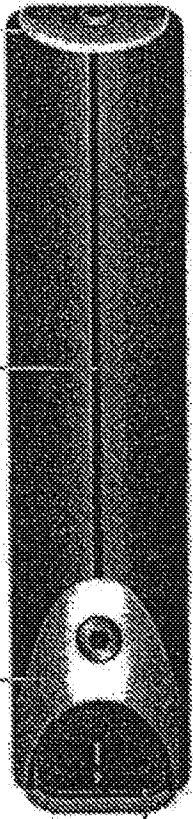
150 cm radius and three stages on all handle assemblies



cast aluminum tip

tip relief  
(top and bottom joint)

cast aluminum cap

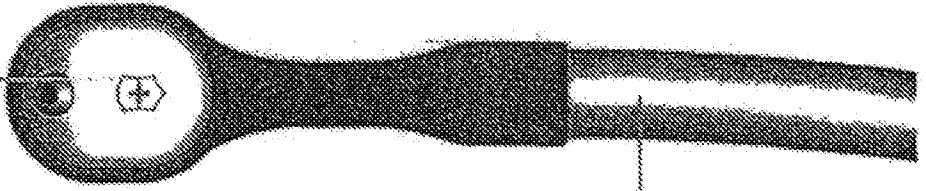


debossed logo

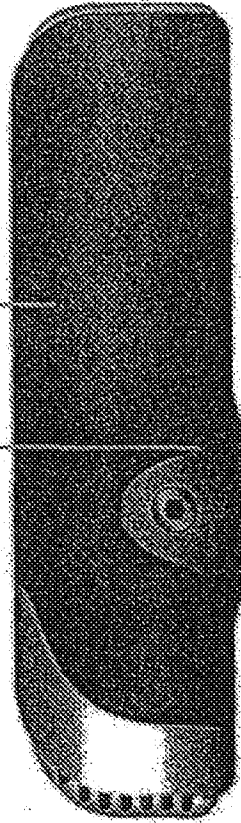
abs over-molded with tpr

tip relief  
(between parts)

abs bottom with rib structure  
over-molded in smoked pu



extruded aluminum tube



abs over-molded with tpr

cast aluminum hub

cast aluminum shoulder

